IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 234 of 2005
with
CIVIL APPLICATION NO. 5271 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

CHAMPABEN NANDLAL PARMAR - Petitioner(s)
Versus
BIPINCHANDRA MANSUKHLAL SANGHVI - Respondent(s)

==========

Appearance :

MR VIREN G DAVEfor Petitioner No(s).: 1 - 1.
MR. V.G.PAVA for M/S THAKKAR ASSOC. for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 14/07/2005

ORAL JUDGMENT

1.By instant petition under Articles 226 and 227 of the Constitution of India petitioner seeks to challenge the order dated 10.12.2004 recorded below application exh.8 in Regular Civil Suit No. 153 of 2004 by which the application filed by the petitioner against the respondent under Section 10 of the Code of Civil Procedure for staying the Regular Civil Suit No. 153 of 2004 till the disposal of Regular Civil Suit No. 73 of 2004, has been rejected.

2.Having heard Mr. Viren G. Dave, learned advocate of the petitioner and Mr. V.G.Pava, learned advocate for the respondent and on perusal of the impugned order and on the facts and in the circumstances emerging from the record of the case, according to this Court, Section 10 of the Code of Civil Procedure cannot be attracted to the facts of the present case as no common question is involved in both the Suits though the subject matter is the same suit property, hence no interference is called for in exercise of powers conferred under Article 227 of the Constitution of India, where the jurisdictional sweep is very limited.

3.Needless to mention that though the petition is filed under Article 226/227 of the Constitution of India, but this Court treat the Petition filed under Article 227 of the Constitution of India in view of the reported decision of the Supreme Court in the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC **524.**It is held by a Three Judge Bench of the Supreme Court that the petition would not lie under Article 226 of the Constitution of India but the petition would lie under Article 227 of the Constitution of India against the interlocutory order passed by the trial Court.

4.It is not necessary to refer to the judgements cited at the bar by Mr. Viren G. Dave, learned advocate of the petitioner as they are not applicable to the facts of the present case.

5.Seen in the above context, the petition lacks merit and deserves to be rejected.

6.For the foregoing reasons, petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted earlier shall stand vacated.

7.Since the present petition is dismissed, Civil Application No. 5271 of 2005 which is filed for vacating the interim relief now does not assume any survival value, hence it is rejected.

(A.M.Kapadia,J)

Jayanti*